

REMARKS:

Claims 1-5 are believed to be pending in the application. By this amendment, claim 1 is canceled in favor of new claim 6; claim 5 is cancelled in favor of new claim 7, which mirrors the changes as between claims 1 and 6; and claims 2-4 are amended to change dependencies accordingly as well as to modify certain terminology consistent with the changed terminology in new claim 6. Applicant requests reconsideration and allowance in view of the above amendments and the following remarks.

Specification Changes

Consistent with the revised claim language, Applicant has amended various paragraphs of the specification to refer to the second controller as being programmed and to the controller determining by its programming the various states of the compressor. Applicant submits that one having skill in the art would know that modern controllers are necessarily programmed, such that the present amendments do not introduce new matter. Accordingly, Applicant requests entry of the specification amendments.

Rejection Under 35 U.S.C. § 102

Claims 1-4 were rejected under 35 U.S.C. § 102(b) as anticipated by Cunkelman, U.S. 6,390,779. In particular, the Examiner asserted that Cunkelman discloses first and second control members 10 and 40. With regard to the first control member, the Examiner asserted that, as recited by the claims, it “is inherently active when controlling the compressor and passive when not controlling the compressor.” With regard to the second control member, on the other hand, the Examiner asserted that

Applicant functional claims [sic] a number of situations where the second control member is “configured” to be able to do something. All that is required of the prior art to meet this limitation is that the prior art device must be able to perform this function. Here Cunkelman easily satisfies the requirement of being able to perform the functions claimed by Applicant.

Applicant again requests reconsideration and withdrawal of this rejection.¹

Independent claim 6 recites more concretely or affirmatively that the second controller actually is programmed so as to determine whether the compressor is operating by analysis of recorded pressure and pressure changes in the pressure tank, not just that it is “adapted” to do so as previously recited in claim 1. Therefore, the mere fact that the microprocessor 40 in Cunkelman – what the Examiner construed as the claim-recited second control member – is able to be so programmed is insufficient to meet the claim limitations. (Even if one were to instead construe the computer 10 in Cunkelman as the claim-recited second control member, the same holds true.) Furthermore, there is no disclosure in Cunkelman of determining whether the compressor is operating by analyzing recorded pressure and pressure changes in the pressure tank. Rather, the only thing Cunkelman discloses relating to the operational status of the compressor is that its RPM is sensed or noted – and that being for the purpose of releasing built-up pressure before changing speeds of the compressor (where it is powered by a multiple-speed motor) so as to ease the change in speed. See column 4, lines 22-30. Thus, Cunkelman does not anticipate any of the claims, and Applicant requests that the rejection be withdrawn.

Claim for Priority

The Examiner had noted previously that the pendency status, at the time this application was filed, of the PCT application of which the present application is a continuation had not been certified. Additionally, the Examiner had noted previously that a certified copy of the underlying Swedish priority application had not been filed.

¹ To the extent claim 1 is cancelled, the rejection is technically moot. However, Applicant notes that the various statements in previous filings as to why Cunkelman does not anticipate the claimed invention are not as clear as could be the case. Therefore, Applicant disavows those earlier statements in lieu of the statements herein and requests that they (the earlier statements) be ignored.

Regarding required pendency of a PCT application on which a U.S. continuation application may be based, M.P.E.P. § 1895.01 explains as follows:

if the international application is one where the 20-month period from the priority date expired before April 1, 2002, then it was necessary to file a demand electing the United States prior to the expiration of 19 months from the priority date in order to extend the international phase to 30 months from the priority date. If such a demand was not timely filed, then under former 37 CFR 1.494, such an international application became abandoned at the expiration of 20 months from the priority date unless a proper submission under 35 U.S.C. 371 to enter the U.S. national phase was made prior to the expiration of 20 months from the priority date. Accordingly, if the international application is not subject to the filing of a demand in order to delay entry into the U.S. national phase to 30 months from the priority date, then a national application filed prior to the expiration of this 30 month period will be copending with the international application unless the international application was withdrawn, either generally or as to the United States, prior to the filing of the national application.

In this case, as the Examiner will see from the information listed in the underlying PCT application (publication number WO 02/101240), a copy of which is again being filed with this paper, the original priority application (SE 0101949-6) was filed on June 5, 2001. Therefore, the 20-month date was February 5, 2003 and thus had not passed prior to April 1, 2002.

Accordingly, it was not necessary to file a Demand (electing Chapter II proceedings) in order to extend pendency of the international application and delay entry into the U.S. national phase until 30 months from the priority date. Furthermore, the 30-month date was December 5, 2003, and that is the date the present continuation application was filed. Applicant's undersigned representative is not aware of any withdrawal of the underlying PCT application, either generally or as to the U.S., and the fact that the Assignee of this application (the Applicant for purposes of the PCT application) instructed that it be filed is evidence that it had not, in fact, been withdrawn. Thus, the PCT application and the present application should have been co-pending as of the date the present application was filed.

As for a certified copy of the original Swedish priority application, that was, in fact, filed on January 5, 2006, and another copy will not be filed herewith.

Double Patenting Rejection

Claims 1-5 were rejected for obviousness-type double patenting over claims 2 and 7-10 of co-pending application 10/707,334 (now U.S. 7,059,279) because, according to the Examiner, there were not deemed to be patentably distinct since all of the limitations of the various claims in this application could be found in various dependent claims in the other application.

Applicant traverses the rejection.

The claims of the other application/patent all require an adjustable fan, which cools the various compressed air airlines; none of the claims in this application, on the other hand, requires any fan at all. Conversely, all of the claims of this application require that the second control member is programmed so as to determine whether the compressor is operating by analysis of recorded pressure and pressure changes in the pressure tank, whereas only a few of the dependent claims in the other application require that (in addition to requiring the cooling fan). Thus, Applicant submits that the two applications were, in fact, directed to patentably distinct subject matter and requests that the rejection be withdrawn.

In view of the foregoing, Applicant submits that all claims are in condition for allowance, and timely Notice to that effect is respectfully requested.

Furthermore, given the numerous Notices of Non-Compliance that have issued and the delay that has introduced into examination of this application, Applicant request that the Examiner contact the undersigned representative by phone rather than issuing any further such Notices should there be any issues that are perceived not to have been addressed.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 0173.046.PCUS00.

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